



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

Book Reviews

CALIFORNIA JURISPRUDENCE: A COMPLETE STATEMENT OF THE LAW AND PRACTICE OF THE STATE OF CALIFORNIA. Vol. I, "Abandonment" to "Ancient Lights." Edited by William M. McKinney, with an Introduction by Hon. William W. Morrow, Bancroft-Whitney Company, San Francisco, 1921. pp. xlix, 1127.

The first volume of this publication runs from an article on Abandonment, by Dean William Carey Jones, of the University of California, to the cross-reference of Ancient Lights. The most important articles are those on Accounts and Accounting, Adverse Possession, Agency, and Actions, the latter by Dean Maurice E. Harrison, of the Hastings Law School. This latter article presents carefully the confusion that has resulted from the failure to correlate right and remedy, and the unfortunate results of adherence to the distinctions between law and equity, contract and tort, action and special proceeding, etc., etc. The feature of the first volume is the excellent introduction by the Hon. W. W. Morrow, Judge of the United States Circuit Court of Appeals. Judge Morrow unfolds the remarkable independence displayed by California lawyers. They established a state constitution and acted under it before Congress had admitted California to the Union as a state. They worked out a system of mining law, which was neither the common law nor the Mexican, but a system later adopted as the basis for congressional legislation on the public domain. In water law, in the recent series of humanitarian legislative acts, as well as in many other matters, is the independence displayed. The present constitution, adopted in 1879, was an innovation, although it must be confessed that its originality constituted its principal merit.

Judge Morrow's introduction furnishes an admirable background for this publication, which is in itself a bold and independent undertaking. If it accomplishes nothing else, the first volume justifies the statement of its editor, Mr. William M. McKinney: "Indeed, the California lawyer may be proudly astonished, as the editor has been, to find how in his state, whose life extends over only seventy years, there has been developed a body of case law which has the range and substance to form the basis of the treatises here contained. Possessed of this wealth of material, the California bench and bar are entitled to a work which gives precisely and fully the history and rules of their intimate law alone—a work in which that virile jurisprudence stands out in its full vigor."

To the reviewer there seems to be a fundamental defect in the plan. If nothing more is wanted than the cases, that is, if the lawyer wants to know what the courts have actually decided

on the varying states of facts presented, the digest system, properly done, gives the best results. Does a lawyer need anything more? He may wish to refresh his mind with the general principles. An elementary textbook or an encyclopedia article accomplishes this purpose; or he may want a scientific and critical analysis of the cases and the working out of the common principles running through apparently unrelated subjects to assist him in his understanding of the facts and the application of the law to his own case. This he gets from monographs by experts, articles and notes in legal periodicals, Annotated Cases, etc. A publication which confines itself in reference to California cases exclusively, with an occasional citation of Ruling Case Law (not even the criticisms of California law contained in legal periodicals are included in the scope of the work) can hardly be expected to cover the law adequately.

While the breaking up of the subject into small compartments arranged alphabetically loses the generalized juristic treatment of the textbook, it is perhaps unfair to criticize any apparent omissions, for they may—probably will—be supplied in future volumes. Two or three examples at random will show some of the objections which will occur to a lawyer using the volume. In the article on Actions, page 331, one misses in the discussion of Wrong without Damage the interesting water cases in which this problem has been discussed. Doubtless in the article Waters there will be a full treatment, but in how many other places must the lawyer look if he desires to get all the California cases which could be cited on this point? In the article Agency, on page 860, the rule is correctly stated as to the liability of an agent who contracts without disclosing his principal, but discloses the fact of the agency. *Murphy v. Helmrich* (1884) 66 Cal. 69, 4 Pac. 958 is cited, although it would seem on the facts there that the agent had concluded a verbal contract of sale and made written admissions thereof signed in his own name and not as agent. *Kerry v. Pacific Marine Co.* (1898) 121 Cal. 564, 54 Pac. 89, 66 Am. St. Rep. 65; and *Hobson v. Hassett* (1888) 76 Cal. 203, 18 Pac. 320, 9 Am. St. Rep. 193, are not cited at all on agents' liability.

The author of the article on Adverse Possession quotes a Georgia case to the effect that the subject "presents some of the most doubtful questions known to the law." The difficulties that confront one who seeks to state the California law on this subject are indeed great. A court which holds that one whose eaves project over his neighbor's land does not get "possession" of a part of the air space (*Gillespie v. Jones* (1874) 47 Cal. 259, 263), but which assumes that one who puts a water-pipe in his neighbor's land gets "possession" of some of the sub-surface (*Coonrad v. Hill* (1889) 79 Cal. 587, 21 Pac. 1099), can scarcely be regarded as having clarified the meaning of the word "possession."

This particular confusion might have been avoided had the traditional distinction between possession and use been observed by the court in the second, as it was in the first case, though that distinction itself may possibly be unscientific and unsound. Consistency at least would have been preserved. It is conceivable, though contrary to the usual mode of treatment, that both the situations mentioned should be regarded as involving adverse possession [*Lins v. Seefeld* (1906) 126 Wis. 610, 105 N. W. 917, holds that the eaves owner has "possession"], but it is hard to see how one can be so regarded and the other not. It would have been desirable if the article had pointed out such inconsistencies in the subject of possession and adverse possession in the case-law of the state—in other words, if it had been critical as well as expository. But this would be perhaps too much to expect in a work of such extent. Greater clearness, however, would, we believe, have been attained had the subjects of adverse possession of land and prescriptive acquisition of rights in another's land been treated in separate articles in accordance with the method prevailing among the classical English and American writers on real property. The discussion of terms in section 2 of the article makes for greater confusion.

At times the law is stated without sufficiently calling attention to conflicting cases. Thus in section 56 of the article on Adverse Possession the rule as to obtaining title to land occupied by mistake is correctly stated, but the cases of *Sheils v. Haley* (1882) 61 Cal. 157 and *Janke v. McMahon* (1913) 21 Cal. App. 781, 133 Pac. 21, which seems to be contrary to the rule stated in the text as well as to the weight of California authority, are not cited. The important case of *Lucas v. Provines* (1900) 130 Cal. 270, 62 Pac. 509 is omitted from the citation of cases in support of the rule.

The possibility of obtaining title to a horizontal section of the soil has been generally acknowledged and has been recognized in this state in *Fairbanks v. S. F. & N. P. Ry. Co.* (1897) 115 Cal. 579, 47 Pac. 450, where title to a house was obtained by adverse possession, though not to the land on which it stood. The topic is not discussed in this article.

The publication will, it is believed, have its chief value to California practitioners as a digest. As such it contains cases and points of view that would otherwise be missed and no California lawyer can afford to ignore it in his practice.

A. M. Kidd.